

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In the Matter of the
Revocation of the Foster Care
License of Martin Trudell

RECOMMENDED ORDER
FOR SUMMARY DISPOSITION

The above-entitled matter is pending before the undersigned Administrative Law Judge pursuant to the Department of Human Services' Notice of and Order for Hearing submitted on January 12, 2001. Also on January 12, 2001, the Department filed a motion for summary disposition. By letter dated February 7, 2001, the Department informed the Office of Administrative Hearings that it had been informed by Mr. Trudell's attorney that he would not be filing a response to the motion.

The facts are as stated in the Department's motion papers and are incorporated herein.

Based upon all the files and procedures herein, and for the reasons set forth in the accompanying memorandum, it is concluded that there is no genuine issue of material fact in this proceeding and that the Department is entitled to judgment as a matter of law.

NOW THEREFORE, pursuant to Minn. R. 1400.5500 K (1997),

IT IS HEREBY RECOMMENDED that the Commissioner of the Minnesota Department of Human Services order that the Department's motion for summary disposition be GRANTED and that the Department's administrative decision to revoke the foster care license of Martin Trudell be AFFIRMED.

Dated this _____ Day of March 2001.

ALLAN W. KLEIN
Administrative Law Judge

Reported: Submitted on memorandum

MEMORANDUM

The underlying issue in this Motion is whether summary disposition should be granted because the Office of Administrative Hearings has no jurisdiction to consider the issues that form the basis of the foster care license revocation.

Minnesota law requires the Department to disqualify any person from further contact with foster children if they have been determined administratively to have maltreated a child.^[1] Disqualification, and in this instance, the substantiated facts leading to the disqualification of the licensee, are grounds for license revocation.^[2]

The legislature has limited the involvement of the Office of Administrative Hearings in disqualification determinations. Minnesota Statutes, section 245A.04, subdivision 3b(e) provides:

Except as provided in subdivision 3c, the commissioner's decision to disqualify an individual, including the decision to grant or deny a rescission or set aside a disqualification under this section, is the final administrative agency action and *shall not be subject to further review in a contested case under chapter 14 involving a negative licensing appeal taken in response to the disqualification* or involving an accuracy and completeness appeal under section 13.04. [Emphasis added.]

After receiving notice of his disqualification, the licensee requested reconsideration pursuant to Minnesota Statutes, section 245A.04, subdivision 3b. The Commissioner affirmed the disqualification. The licensee also requested and was granted a fair hearing pursuant to Minnesota Statutes, section 256.045, subdivision 3. The Referee recommended that the allegations against the licensee be affirmed and the Commissioner adopted the recommendations.

Under Minnesota law, this Administrative Law Judge is bound by the Commissioner's earlier decision, and the law does not allow him to hear evidence and come to a different conclusion. The Administrative Law Judge must accept the facts that form the basis of the disqualification and the disqualification itself. The licensee's right to contest the commissioner's decision on reconsideration can only be appealed to the Minnesota Court of Appeals. The licensee has chosen not to pursue that route, and the time for filing an appeal has now expired.

In this matter, the facts that form the basis for the disqualification are primarily the same facts upon which the license revocation is based. In addition, the disqualification itself is provided as a basis for the license revocation. Because the Administrative Law Judge has no jurisdiction to consider the disqualification or hear evidence disputing the facts leading to the determination, it must be concluded that there are no material facts in dispute, or better stated, that there are no material facts that are disputable in this forum. The

undisputable facts and determinations provide sufficient grounds for license revocation, and therefore, the Department is entitled to judgement as a matter of law.

One of the grounds for revocation was not a part of the disqualification proceeding, and thus is not subject to the summary disposition granted herein. It is the allegation of overcapacity. This allegation has not been considered by the Administrative Law Judge in reaching his decision, and should not be considered by the Commissioner either. There is no need to rely on it in light of the other, more serious incidents underlying this proceeding.

NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner of the Department of Human Services shall not be made until this Recommended Order has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Recommended Order, if any, shall be filed with the Commissioner.

A.W.K.

^[1] Minnesota Statutes, section 245A.04, subdivision 3d.

^[2] Minnesota Rules, parts 9543.0100, subpart 3B (disqualification is grounds for recommending license revocation); 9545.0020, subpart 14 (inability to comply with foster care rules shall be cause for revocation); and 9543.1060, subpart 4C (substantiated abuse, neglect or maltreatment is grounds for license revocation).